2013 IL App (4th) 120096-U

NO. 4-12-0096

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 25, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
RANDALL DEWAYNE WHITE,	)	No. 10CF953
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The office of the State Appellate Defender's motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), is allowed, because no meritorious issues could be raised on appeal.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), because no meritorious issues can be raised in this case. For the following reasons, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In October 2010, the State charged defendant, Randall Dewayne White, with (1) unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(d)(i) (West 2010) (less than 1 gram of a substance containing heroin)) and (2) unlawful possession of

a controlled substance (720 ILCS 570/402(c) (West 2010) (less than 15 grams of a substance containing heroin)).

¶ 5 A. Defendant's June 2011 Jury Trial

¶ 6 The State's only witness was Officer Richard Beoletto of the Bloomington police department. He testified that he and Officer Aaron Veerman of the Bloomington police department were on patrol at the Evergreen housing complex, part of the Bloomington Housing Authority, shortly after 9 p.m. on October 2, 2010. The two officers were in a police car parked in a parking lot directly south of the housing complex, facing north. Both officers were in uniform. Although it was nighttime, the area was illuminated with lights.

¶ 7 Two men emerged from an apartment within the complex and walked together south in the direction of the officers. Officer Beoletto estimated the men were less than 100 feet from his police car when they exited the apartment. The officers exited the police car and walked north toward the men. When the men appeared to notice the officers approaching, they paused momentarily and then walked in two different directions. One man turned around and walked north away from the officers. The other man, whom Beoletto identified as defendant, walked southwest toward a large tree just north of the parking lot.

¶ 8 Defendant walked behind the tree. The left side of defendant's body was partially concealed from Officer Beoletto's view but Beoletto could see the right side of defendant's body protruding from behind the tree. Beoletto watched defendant lean down "as if he was setting something on the ground." After "a second or two [defendant] stood right back up and continued walking towards the southwest." Beoletto was 12 to 15 feet away from defendant at the time. Beoletto got off the stand to physically demonstrate defendant's actions to the jury.

¶ 9 Officer Beoletto asked defendant to stop walking. Defendant complied. Beoletto took defendant's identification, told defendant to sit down on a curb along the parking lot, and walked to the area behind the tree where defendant appeared to have set something on the ground. In the exact area where defendant bent down, Beoletto found "a small clear plastic baggy [*sic*] corner that was knotted to one end that contained a rock like substance inside of it." The State and defendant stipulated the bag contained heroin.

¶ 10 The trial court accepted into evidence four photographs depicting the area outside the apartment complex where defendant allegedly dropped the bag of heroin behind a tree. Beolleto referenced these photographs during his testimony.

¶ 11 Officer Beoletto placed defendant under arrest. Defendant told Beoletto he had too much to drink. Beoletto searched defendant's person and found a cellular phone and $480 cash in his pocket. Defendant told Beoletto the heroin did not belong to him. Following Beoletto's testimony, the State rested.

¶ 12 Defendant moved for a directed finding of not guilty, arguing the State failed to prove defendant had actual or constructive possession of the heroin Officer Beoletto found behind the tree. The trial court denied the motion.

¶ 13 Defendant presented testimony from Phillip Martin, the man who walked out of the apartment with defendant. Martin testified defendant lived with Leeann Biddle, Martin's sister, on October 2, 2010. That evening, defendant rode with Martin from Biddle's apartment to the Evergreen housing complex to visit Martin's girlfriend, Denise Stinson. Defendant and Martin drank liquor at Stinson's apartment in the Evergreen housing complex. The two men drank heavily and defendant became drunk. After an hour or two at the apartment, both men left.

After walking outside, Martin held defendant's arm while defendant vomited. Martin testified defendant was stumbling forward and vomiting as the police officers approached from the parking lot. Martin did not see defendant put his hands in his pockets or drop a bag of heroin behind the tree. When defense counsel showed Martin a photograph of the tree behind which Beoletto found heroin, Martin testified he did not see defendant go near the tree. On cross-examination, however, Martin testified defendant vomited "right by" the tree behind which Officer Beoletto found the bag of heroin.

¶ 14 Leeann Biddle testified that on October 2, 2010, she and defendant lived together in an apartment with their two children. Defendant was working helping an electrician at that time and getting paid in cash. Biddle gave defendant $400 cash a few days prior to October 2.

¶ 15 Defendant did not testify.

¶ 16 On this evidence, the jury found defendant guilty of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)) and not guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(d)(i) (West 2010)).

¶ 17 The trial court entered judgment against defendant on the charge of possession of a controlled substance and ordered a presentence investigation report (PSI) completed pursuant to section 5-3-1 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-3-1 (West 2010)).

¶ 18 B. Defendant's August 2011 Sentencing Hearing

¶ 19 At defendant's August 1, 2011, sentencing hearing, the court admitted into evidence the PSI and a letter from Leeann Biddle, written in support of defendant. The PSI indicated defendant, then just 32 years old, had eight prior felony convictions, including six prior

felony convictions for offenses relating to possession and/or manufacture-delivery of controlled substances. At the time he committed the offense in this case, defendant was on parole for a 2006 conviction for unlawful manufacture-delivery of a controlled substance (720 ILCS 570/401(f) (West 2006)). The State recommended the maximum sentence of six years' imprisonment. Defense counsel recommended "no more than three years[']" imprisonment. Defendant made a statement in allocution in which he professed his innocence and requested a retrial.

¶ 20 The trial court sentenced defendant to four years' imprisonment with credit for 87 days served. The court then admonished defendant in compliance with Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001).

¶ 21 The trial court granted defense counsel's oral motion to withdraw and appointed the public defender to represent defendant "on postsentencing issues."

¶ 22 C. Defendant's Postsentencing Motions

¶ 23 On August 22, 2011, defendant filed a *pro se* "motion to reconsider sentence" in which he essentially challenged his conviction and requested release from the Department of Corrections. On August 31, 2011, the trial court directed defendant's existing appointed counsel to file any amended motion within 30 days.

¶ 24 In September 2011, defendant, through appointed counsel, filed an amended motion to reconsider sentence. In the amended motion, defendant alleged only that his sentence was excessive.

¶ 25 In December 2011, prior to the hearing on defendant's amended motion to reconsider sentence, defendant filed a *pro se* "motion for arrest of judgment or, alternatively, for

new trial."

¶ 26 In January 2012, following a hearing, the trial court denied defendant's amended motion to reconsider sentence. The court then admonished defendant in compliance with Rule 605. Following those admonishments, the court personally addressed defendant regarding his December 2011 "motion for arrest of judgment or, alternatively, for new trial." The court informed defendant his motion was untimely and would be stricken because such a motion must be filed within 30 days of the entry of the verdict. The court then directed the clerk to prepare a notice of appeal on behalf of defendant and appointed OSAD to represent defendant on appeal.

¶ 27 In March 2013, OSAD filed a motion to withdraw, attaching to its motion a brief in conformity with the requirements of *Anders*. On its own motion, this court granted defendant leave to file additional points and authorities by May 1, 2013. Defendant has not done so.

¶ 28 II. ANALYSIS

¶ 29 OSAD argues no meritorious issues can be raised on appeal. Specifically, OSAD asserts no colorable argument can be made (1) the State's evidence was insufficient to sustain defendant's conviction; (2) defendant received ineffective assistance of counsel; (3) the trial court abused its discretion at sentencing; or (4) the court erred by not considering defendant's *pro se* postsentencing motions. We agree with OSAD no meritorious issue can be raised on appeal.

¶ 30 A. The State's Evidence Was Sufficient To Sustain Defendant's Conviction

¶ 31 When presented with a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277

(1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)). "Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Bush*, 214 Ill. 2d 318, 326, 827 N.E.2d 455, 460 (2005). This standard applies in all criminal cases, regardless of the nature of the evidence. *Id.*

¶ 32 In this case, because the jury found defendant guilty only as to the charge of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)), we review the evidence only as it relates to that offense.

¶ 33 The State and defense stipulated the bag Officer Beoletto found behind the tree contained heroin. The only contested issue at trial was defendant's possession of the bag. Beoletto testified defendant and Martin paused and walked in opposite directions after noticing the officers approaching them. Beoletto saw defendant—by himself—crouch, bend down, or lean toward the ground behind a tree. Immediately thereafter, Beoletto found a bag of heroin in the exact spot where defendant bent down. It was the jury's role to judge the credibility of Beoletto's testimony. The jury was free to consider whether a reasonable possibility existed the bag of heroin came from a source other than defendant. Allowing all reasonable inferences in favor of the prosecution, the jury could reasonably have concluded defendant placed the bag of heroin behind the tree. The record contains nothing whatsoever that would allow OSAD to make a colorable argument the State failed to establish all elements of the offense beyond a reasonable doubt.

¶ 34 B. Defense Counsel Was Not Ineffective

¶ 35 We analyze ineffective-assistance-of-counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires the defendant to prove (1) his

counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163-64 (1999).

¶ 36 Based on our review of the entire record, including the pretrial proceedings, trial, and posttrial proceedings, we find no instances in which defense counsel rendered assistance that would satisfy the two-pronged test of *Strickland*. In fact, we find defendant enjoyed highly competent representation throughout this case. At trial, defense counsel actively participated in jury selection, made appropriate objections, engaged in thorough cross-examination of the State's witness, presented well-reasoned arguments, and even succeeded in securing an acquittal for defendant on the more serious charge of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(d)(i) (West 2010)). We agree with OSAD no colorable argument can be made defense counsel was ineffective.

¶ 37 C. The Trial Court Did Not Abuse Its Discretion at Sentencing

¶ 38 This court has explained the appellate standard of review of the trial court's sentencing determination, as follows:

> "A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case.

> [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review. [Citation.] If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234–35, 819 N.E.2d 1274, 1284 (2004)).

¶ 39 Due to defendant's prior convictions, he faced a possible extended-term sentencing range of between three and six years (730 ILCS 5/5-4.5-45(a) (West 2010). The trial court's sentence of four years, as opposed to the minimum term of three years, was based on the fact this was defendant's ninth felony conviction. Further, the court noted defendant committed the offense in this case while on parole for a prior drug-related felony. Given these facts and our highly deferential standard of review, we agree with OSAD no colorable argument can be made the court abused its discretion at sentencing.

¶ 40 D. The Trial Court Did Not Err By Refusing To Consider Defendant's *Pro Se* Motions

¶ 41 "In criminal cases, a defendant has the right to represent himself or to have

counsel represent him." *In re Sean N.*, 391 Ill. App. 3d 1104, 1105, 911 N.E.2d 1094, 1095 (2009). In other words, "a defendant possesses 'no right to some sort of hybrid representation, whereby he would receive the services of counsel and still be permitted to file *pro se* motions.' " *People v. James*, 362 Ill. App. 3d 1202, 1205, 841 N.E.2d 1109, 1113 (2006) (quoting *People v. Handy*, 278 Ill. App. 3d 829, 836, 664 N.E.2d 1042, 1046 (1996)). Accordingly, "[w]hen a defendant is represented by counsel, he generally has no authority to file *pro se* motions, and the court should not consider them." *People v. Serio*, 357 Ill. App. 3d 806, 815, 830 N.E.2d 749, 757 (2005).

¶ 42 In this case, defendant was represented by counsel when he filed his August 2011 "motion to reconsider sentence" and his December 2011 "motion for arrest of judgment or, alternatively, for new trial." In neither motion did defendant assert his counsel was unwilling or unable to file motions on his behalf, nor did defendant request to discharge counsel and represent himself *pro se*. Because defendant was represented by counsel, we agree with OSAD no colorable argument can be made the trial court erred by refusing to consider defendant's *pro se* motions.

¶ 43 III. CONCLUSION

¶ 44 After examining the record in accordance with our duties under *Anders*, we agree with OSAD that no meritorious issue can be raised on appeal. Accordingly, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 45 Affirmed.